APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,835	03/21/2001	Darren R. Kerr	202890US-25	2952

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EXAMINER
SWEARINGEN, JEFFREY R

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>12 May 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-6 and 8-18</u> is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-6 and 8-18</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All   b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1-6 and 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brech (U.S.

Patent No. 5,754,768) in view of Lyon et al. (U.S. Patent No. 5,892,924).

3.   In regard to claim 1, Brech discloses *identifying a first one message of a first plurality of*

messages, said first plurality of messages having at least one first routing treatment in common; recording

said first routing treatment; identifying a second one message of said first plurality of messages; routing

said second one message responsive to said first routing treatment. Brech discloses creating "packet

trains", which are methods of sending similar packets which are part of the same "session" in batches

over a data communications network. [Brech, column 3, lines 8-10, lines 20-27, column 4, lines 43-47,

lines 53-67, column 5, lines 15-25] Brech fails to disclose the use of a flow cache. However, Lyon

discloses that flow information is cached in the system to keep track of the flow state. [Lyon, column 19,

lines 23-25] Because both Brech and Lyon deal with routing a flow (session as defined in Brech) of

messages over a particular path in a network, it would be obvious to one of ordinary skill in the

networking art at the time of the invention to combine the teachings of Brech and Lyon in order to keep

track of the current state of the flow for purposes of efficiency. [Lyon, column 19, lines 17-19] [Brech,

column 2, lines 1-9]

4.   In regard to claim 2, Brech in view of Lyon is applied as in claim 1. Brech further discloses *said*

first one message comprises a packet; and *said first plurality of messages comprises a stream of packets*

associated with a selected source device and a selected destination device. Brech deals with combining

packets and grouping them according to sessions, or *a stream of packets associated with a selected source device and a selected destination device.* [Brech, column 3, lines 8-27]

5.   In regard to claim 3, Brech in view of Lyon is applied as in claim 2. Brech further discloses *said stream of packets is associated with a first selected port number at said source device and a second selected port number at said destination device.* Brech affiliates the session with a BINDing request that associates the session with protocols used to communicate between the source and destination. The process of binding the request would inherently involve association with port numbers. [Brech, column 3, lines 12-16]

6.   In regard to claim 4, Brech in view of Lyon is applied as in claim 1. Brech further discloses *said first plurality of messages comprises a message flow.* Brech speaks to grouping packets based upon the session in use between two devices. This session constitutes the necessary requirements to meet the definition of *message flow* given on page 6, lines 5-17 of the specification. [Brech, column 3, lines 8-19]

7.   In regard to claim 5, Brech in view of Lyon is applied as in claim 1. Brech further discloses *said first plurality of messages comprises an ordered sequence, and said first one message has a selected position in said ordered sequence.* Brech discloses that each packet has a sequence number indicating the order in which the packets were sent. [Brech, column 3, lines 26-27]

8.   In regard to claim 6, Brech in view of Lyon is applied as in claim 1. Brech further discloses *said first plurality of messages comprises a stream of messages between a selected pair of transport access points.* Brech discloses sessions between two points with packets being grouped into sessions. [Brech, column 5, lines 6-10]

9.   In regard to claim 8, Brech in view of Lyon is applied as in claim 1. Brech further discloses *comprising the step of identifying a message of a second plurality of messages, said second plurality of messages having at least one second routing treatment in common, said second routing treatment differing from said first routing treatment.* Brech discloses that if a "packet train" is not present for the session ID, a new "packet train" is created. The session ID identifies a *plurality of messages* with a different *routing treatment.* [Brech, column 5, line 65 – column 6, line 10]

10.   In regard to claim 9, Brech in view of Lyon is applied as in claim 1. Brech further discloses *access control information for routing said first one message.* Brech discloses a packet contains data or control information surrounded by control and routing information supplied by various components in the network. [Brech, column 3, lines 20-27]

11.   In regard to claim 10, Brech in view of Lyon is applied as in claim 1. Brech further discloses *a destination output port for routing said first one message.* As shown in the rejection for claim 9, Brech discloses packets with routing information. As shown in the rejection for claim 3, packets in Brech are associated with ports. The routing information would inherently have port information for the destination of a message because of the binding to a particular protocol.

12.   In regard to claims 11-13, Brech in view of Lyon is applied as in claim 1. Brech fails to disclose recording transmission information about the messages and forwarding it to other devices for storing and forwarding. However, Lyon discloses sending REDIRECT messages upstream to previous nodes in the path of the message flow. These REDIRECT messages include the lifetime of the redirection of the flow. [Lyon, column 8, lines 45-55] Brech deals with grouping messages into sessions or *flows* and routing them in the same direction. Lyon also deals with routing flows of messages and classifying the messages into flows. Lyon modifies Brech by allowing for redirection of the routing path in case of congestion along the defined routing path. It would have been obvious to one of ordinary skill in the networking art at the time of the invention to combine the teachings of Brech in view of Lyon for the purpose of allowing faster transmission of data across a network while avoiding unforeseeable data congestion on links defined for use by the network path.

13.   In regard to claim 14, the limitations of this claim are substantially the same as the limitations embodied within claims 1 and 7. Therefore the rejections of claims 1 and 7 are likewise applicable against claim 14. By this rationale claim 14 is rejected.

14.   In regard to claim 15, Brech in view of Lyon is applied as in claim 14. Brech further discloses *access control information for routing said first one message.* Brech discloses a packet contains data or control information surrounded by control and routing information supplied by various components in the network. [Brech, column 3, lines 20-27] By this rationale claim 15 is rejected.

15.   In regard to claim 16, Brech in view of Lyon is applied as in claim 15. Brech further discloses *a*

destination output port for routing said first one message. As shown in the rejections for claims 9 and 15,

Brech discloses packets with routing information. As shown in the rejection for claim 3, packets in Brech

are associated with ports. The routing information would inherently have port information for the

destination of a message because of the binding to a particular protocol. By this rationale claim 16 is

rejected.

16.   In regard to claims 17-18, Brech in view of Lyon are applied as in claim 14. The additional

limitations embodied in claims 17-18 are substantially the same as the limitations embodied within claims

11-12; therefore the rejection against claims 11-12 is equally applicable against claims 17-18. By this

rationale claims 17-18 are rejected.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public
policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of
the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See
In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*,
422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA
1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome
an actual or provisional rejection based on a nonstatutory double patenting ground provided the
conflicting application or patent is shown to be commonly owned with this application. See 37
CFR 1.130(b).
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.
A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

17.   Claims 1-6 and 8-18 are rejected under the judicially created doctrine of double patenting over

claims 1-11 and 16-20 of U. S. Patent No. 6,590,894 since the claims, if allowed, would improperly extend

the "right to exclude" already granted in the patent.

18.   The subject matter claimed in the instant application is fully disclosed in the patent and is covered

by the patent since the patent and the application are claiming common subject matter, as follows: Claim

1 of the instant application is a broader treatment of claim 1 of U.S. Patent No. 6,590,894, hereafter

referred to as '894' for convenience. The combination of claims 1 and 2 of the instant application yields

claim 1 of '894'. Claim 3 of the instant application is analogous with claim 2 of '894'. Claim 4 of the

instant application is analogous with claim '3' of '894', but uses different terminology to describe a

message flow as an "ordered sequence". Claim 5 of the instant application is analogous with claim 3 of

'894'. Claim 6 of the instant application is analogous with claim 4 of '894'. Claim 1 of the instant

application is analogous with claim 5 of '894'. Claim 8 of the instant application is analogous with claim 6

of '894'. Claim 9 of the instant application is analogous with claim 7 of '894'. Claim 10 of the instant

application is analogous with claim 8 of '894'. Claim 11 of the instant application is analogous with claim

9 of '894'. Claim 12 of the instant application is analogous with claim 10 of '894'. Claim 13 of the instant

application is analogous with claim 11 of '894'. Claim 14 of the instant application is a broader recitation

of claim 16 of '894'. Claim 15 of the instant application is analogous with claim 17 of '894'. Claim 16 of

the instant application is analogous with claim 18 of '894'. Claim 17 of the instant application is

analogous with claim 19 of '894'. Claim 18 of the instant application is analogous with claim 20 of '894'.

19.   Furthermore, there is no apparent reason why applicant was prevented from presenting claims

corresponding to those of the instant application during prosecution of the application which matured into

a patent. See MPEP § 804.

Response to Arguments

20.   Applicant's arguments filed 5/12/05 have been fully considered but they are not persuasive.

21.   Applicant argues that Lyon does not teach adding entries into a flow cache. The Examiner points

Applicant to Lyon, column 8, lines 54-55, which clearly describes adding new entries for the status of a

flow. Lyon, column 19, lines 23-25 further teaches that this information has been cached.

22.   In response to applicant's argument that there is no suggestion to combine the references, the

examiner recognizes that obviousness can only be established by combining or modifying the teachings

of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation

to do so found either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*,

958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Brech and Lyon deal with flows of

data that are being routed.

23.   In response to applicant's argument that the references fail to show certain features of applicant's

invention, it is noted that the features upon which applicant relies (i.e., prevention of redundant

processing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988

F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

24.   Upon review by the Examiner, the amendments do not overcome the Double Patenting rejection.

Applicant is invited to file a terminal disclaimer since Applicant has stated that they are prepare to do so in

order to overcome the Double Patenting rejection.

Conclusion

25.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

26.   Tobita et al.   U.S. Patent No. 5,862,083

27.   Isfeld et al.   U.S. Patent No. 5,483,640

28.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of

the extension of time policy as set forth in 37 CFR 1.136(a).

        A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX

MONTHS from the date of this final action.

        Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can

normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Valencia Martin-Wallace can be reached on 571-272-6159. The fax phone number for the organization

where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free).

RUPAL DHARIA
PATENT EXAMINER